IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.72/98 along with
RFAs No.56, 63 and 75 of 1998

Judgment Reserved on: 30.4.2007

Date of Decision: 30.5.2007

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1. RFA. NO.72 of 1998 along with C.O. No.164/98

Chamera HE Project ,NHPC. Vs. Kalyan Singh & others

…..Appellant …Respondents

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2. RFA. NO.56 of 1998 along with C.O. No.161/98.

Chamera HE Project ,NHPC. Vs. Inder Singh & others

…..Appellant … Respondents.

***2. RFA. NO.63 of 1998* along with C.O. No.159/98**

Chamera HE Project ,NHPC. Vs. Smt. Gian Dei & others

…Appellant …..Respondents

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3. RFA. NO.75 of 1998 along with C.O. No.160/98.

Chamera HE Project ,NHPC. Vs. Naresh Rana & others

……Appellant ……Respondents

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The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No

For the appellant: ***Mr. Rajnish Maniktala, Advocate vice Mr. K.D. Shreedhar, Advocate .***

For the respondents : Mr.Anand Sharma, Advocate, for respondent No.1

Mr. M.L. Chauhan, Addl. Advocate General, for respondents No.2 & 3

(in all appeals)

Kuldip Singh, J

1. This judgment shall dispose of RFA No.72 of 1998 along with Cross-objection No.164 of 1998, RFA No.56 of 1998 along with Cross-objection No.161 of 1998, RFA No.63 of 1998 along with Cross-objection No.159 of 1998 and RFA No.75 of 1998 along with Cross-objection No.160 of 1998, as these appeals and Cross-objections have arisen from common award dated 1.11.1997 passed by learned District Judge Chamba.

2. The facts in brief are that State of Himachal Pradesh for construction of reservoir of Chamera Dam acquired land in Mohal Rajnagar, Pargana Rajnagar,Tehsil and District Chamba. The notification under Section 4 of the Land Acquisition Act , 1894 (for short Act) was published on 6.6.1992 and the Land Acquisition Collector after conclusion of the acquisition proceedings announced the award on 31.7.1993. The Collector awarded the compensation as per details given below:-

Sr.No.	Case No. and title of the petition	Area of land acquired	Amount of compensation awarded
1.	53/94, Kalyan Singh Vs. State etc.	2-12-0 Structures	75-493/- 51,488
2	31/94 Naresh Rana Vs. State etc.	2-9-0 Structures	65,483/- 51,918/-
3.	51/94 Inder Singh Vs. State etc.	2-12-0 Structures	75,493/- 51,488
4.	54/94 Smt. Gian Dei Vs. NHPC etc.	2-16-0	81,000/-

Whether reporters of Local Papers may be allowed to see the Judgment*? Yes*

3. The Collector awarded compensation at different rates keeping in view the quality of land. Some land owners filed reference petitions under Section 18 of the Act for enhancement of the compensation. As per the land owners the Collector has given less compensation for the acquired land. They claimed enhancement of the compensation under different heads and at different rates as mentioned in their respective claim petitions

4. The petitions were contested by the State and the Project Authorities on the grounds that market value of the acquired land and structures as determined by the Collector is correct and it does not require any enhancement.

5. The learned District Judge vide order dated 11.7.1995 in case No. LAC 53 of 1994, Kalyan Singh vs. State consolidated the other cases including case No. LAC 31/94 Naresh Rana vs. State, case No. LAC 51/94 Inder Singh vs. State, case No.LAC 54/94 Smt. Gian Dei vs. NHPC. The learned District Judge in cases LAC NOs. 53/94, 31/94, 51/94 and 54/94 announced the common award on 1.11.1997.

6. The Chamera Hydro Electric Project is in appeal in all the four cases. The land owners have also filed Cross-objections in the appeals as noticed above.

7. I have heard Sh. Rajnish Maniktala, learned counsel for the appellant and Shri Anand Sharma, learned counsel for the land owners and Shri M.L. Chauhan, learned Additional Advocate General for the State of Himachal Pradesh and Collector and have also gone through the record.

8. The learned counsel for the appellant has submitted that learned District Judge has misconstrued, misinterpreted the material

on record and has awarded excess compensation to the land owners on account of acquisition of their lands. Small area transaction has been wrongly relied for awarding compensation for acquired land comprising large area. The compensation for structures has been enhanced without any acceptable legal principle. The transactions produced by the appellant for assessment of compensation have been wrongly rejected by learned District Judge. The land owners are not entitled to any enhancement of compensation and the Collector has assessed the compensation correctly. In RFA No.75/98 additional submission has been made to the effect that the learned District Judge on 22.3.1994 dismissed in default case LAC NO.31/94. The dismissal in default order dated 22.3.1994 was not recalled but despite that while deciding other cases, the case LAC No.31/94 was also taken up and in that case also the learned District Judge has enhanced the compensation. The enhancement of compensation in this case is absolutely illegal.

9. The learned counsel for the land owners has submitted that the Collector has awarded less compensation and for that reason the land owners have filed Cross-objections and they are entitled to further enhancement of the compensation. The learned Additonal Advocate General has submitted that the Collector has awarded correct compensation and it does not require any further enhancement.

10. PW-1 Naresh Kumar has deposed that the acquired land is in village Thadi and all the petitioners had Brani Awal land. The acquired land was situated adjacent to road and was irrigated. There were fruit bearing trees on the acquired land. The facilities of school and hospital etc. were there and the compensation awarded is very less. The minimum compensation should be at the rate of

Rs. 1,00,000/- per Bigha. The owners had their abadi on the acquired land and their houses got submerged in water, the compensation of the houses was given on the lower side. Their shifting expenses were in between Rs. 50,000/- to Rs.60,000/-.

11. PW-2 Sahib Singh has stated that he was owner of land in village Thadi and he had sold 3 biswas land to Tilak for Rs.12,000/-, vide sale deed Ex.PW-2/A. He had received the sale consideration.

12. PW-3 Hardiyal has stated that he had sold village Thadi land measuring 2 biswas to Chapad for Rs.10,000/- vide sale deed Ex.PW-3/A.

13. PW-4 R.K. Chona has stated that he remained associated with Chamera Project . He has done the assessment of buildings as per 1987 schedule.

14. The other documentary evidence which has come on record is Ex.PX jamabandi for the year 1984-85, Ex.PY jamabandi for the year 1994-95, Ex.DX mutation No.1041, Ex.DY mutation No.993, Ex.R-1 sale deed dated 2.7.1992 and Ex.R-2 sale deed dated 9.7.1992.

15. PW-2 Sahib Singh vide sale deed Ex.PW-2/A dated 15.1.1991 has sold khasra No.2048 measuring 3 biswas in Mohal Rajnagar for Rs.12,000/-. As per sale deed Ex.PW-2/A, market value of land in Mohal Rajnagar in the year 1991 was Rs.4,000/- per biswa. PW-3 Hardiyal Singh has sold land measuring 2 biswas in Mohal Rajnagar vide sale deed Ex.PW-3/A for Rs.10,000/-. And therefore the market value of land in Mohal Rajnagar as per sale deed Ex.PW-3/A was Rs.5,000/- per biswa. As per jamabandi Ex.PX khasra No.2048 which was subject matter of sale in Ex.PW-2/A has been shown Kulahu Awal. The mutation No.1041 of sale Ex.DX pertains to sale

deed dated 2.7.1993. The mutation No.993 Ex.DY pertains to sale deed dated 9.7.1992.

16. The sale deed Ex.R-1 is dated 2.7.1993 and sale deed Ex.R-2 is dated 9.7.1992. The notification under Section 4 of the Act was published on 6.6.1992. The sale deeds Ex.R-1, Ex.R-2, mutations Ex.DX and Ex.DY are of the period after the publication of notification under Section 4 of the Act. The sale deed Ex.PW-2/A dated 15.1.1991 and sale deed Ex.PW-3/A dated 4.2.1988 are prior to publication of notification under Section 4 of the Act.

17. The learned counsel for the appellant has submitted that the learned District Judge has erred in relying sale deed Ex.PW-3/A dated 4.2.1988 . He has submitted that the sale deed Ex.PW-3/A pertains to 2 biswas small area in comparison to large area acquired for the reservoir project. He has submitted that small area transaction cannot be relied for assessing market value of large area.

18. The first question is whether the sale deed Ex.PW-3/A is a genuine transaction or not. The notification under Section 4 of the Act was issued on 6.6.1992 whereas the sale deed Ex.PW-3/A was executed on 4.2.1988. Therefore, it can be safely inferred that the sale deed Ex.PW-3/A is a genuine transaction and it has not been executed just to enhance the market value of acquired land. PW-3 Hardiyal Singh vendor of sale deed Ex.PW-3/A has appeared in the witness box and has proved sale deed Ex.PW-3/A. He has been cross-examined but nothing favourable has been extracted by the appellant in his cross examination. Therefore, it is held that sale deed Ex.PW-3/A is a genuine transaction.

19. The learned counsel for the appellant has submitted that no doubt sale deeds Ex. R-1 and Ex.R-2 have been executed after the

notification under Section 4 of the Act, but learned District Judge has erred in not relying these sale deeds on the grounds that vendors or

vendees of these sale deeds have not been examined. He has submitted that vendors and vendees of sale deeds Ex.R-1 and Ex.R-2 are not absolutely necessary to be examined in view of the law laid down by the Hon'ble Supreme Court in ***Cement Corpn. Of India Ltd. Vs. Purya and others (2004) 8 Supreme Court Cases 270***. The Ex.R-1 and Ex.R-2 are certified copies of sale deeds and therefore should have been relied by learned District Judge for assessing the market value of the acquired land. He has further contended that in view of proximity of time of sale deeds Ex.R-1 and Ex.R-2 and notification under Section 4 these sale deeds are relevant for assessing the market value of the acquired land and for this he has relied law laid down by Hon'ble Supreme Court in ***District Judge, Bijnor and another vs. Raghubir Saran Bhatnagar (1982) 2 Supreme Court Cases 383 and in Chiman Lal Hargovinddas vs. Special Land Acquisition Officer, Poona and another (1988) 3 Supreme Court Cases 751.***

20. No doubt in view of Cement Corpn. Of India Ltd. (supra), certified copies of sale deeds can be taken into consideration without examining the vendors and vendees and sale deeds executed immediately after **Section 4** notification can also be relied in certain situations. The post Section 4 notification sale deeds can be taken into consideration, if these transactions are proved to be genuine. The appellant in order to prove the genuineness of the sale deeds has placed nothing on record except the copies of sale deeds Ex.R-1 and Ex.R-2, therefore, simply on the basis of sale deeds Ex.R-1 and

Ex.R-2, it cannot be inferred that sales covered by these sale deeds are genuine sales. The possibility cannot be ruled out that because of acquisition for reservoir there was fear of more acquisition in the area and for that reason the sales covered by sale deeds Ex.R-1 and Ex.R-2 may not be genuine but distress sales. The learned District Judge has rightly did not rely these sale deeds in order to assess the market value of the acquired land.

21. The learned District Judge has not relied Ex.PW-2/A sale deed dated 15.1.1991on the ground that land owners have not led sufficient evidence to believe sale deed Ex.PW-2/A and therefore, it does not inspire confidence. In these circumstances, only document remains on record for assessing the market value of the acquired land is Ex.PW-3/A sale deed dated 4.2.1988. The learned counsel for the appellant has submitted that sale deed Ex.PW-3/A is a small area transaction and therefore, learned District Judge has erred in relying this sale deed for assessing market value of large area which was acquired for construction of reservoir of Chamera Dam.

22. In ***Ravinder Narain and another vs. Union of India (2003) 4 Supreme Court Cases 481, the Hon'ble Supreme Court*** in para-7 has held as follows:-

"***It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices".***

23. The learned District Judge on the basis of sale deed Ex.PW-3/A has come to the conclusion that subject matter of the sale was sold at the rate of Rs.5000/- per biswa. The sale deed Ex.PW-3/A is of a small area, therefore, he allowed 60% deduction on the market value of the sale deed Ex.PW-3/A and assessed the market value of the acquired land at Rs.2000/- per biswa in the year 1992 when the land was acquired or say Rs.40,000/- per bigha as against Rs.27590/- per bigha assessed by Collector for Barani Awal. Once the market value of Barani Awal has been assessed by learned Distriict Judge 45% above the market value assessed by the Collector, then other types of land can also be safely assessed by giving 45% increase above the rates assessed by Collector. In other words, the learned District Judge has assessed the market value of all types of lands 45% above what has been assessed by the Collector.

24. The 60% deduction made by the learned District Judge from the market value shown in sale deed Ex.PW-3/A for assessing the market value of the acquired land has not been seriously objected by the learned counsel for the appellant. Though to be fair to him he objected the very reliance of learned District Judge on sale deed Ex.PW-3/A for assessing the market value. But in my view learned District Judge has rightly relied sale deed Ex.PW-3/A for assessing the market value in the present case. Therefore, in the facts and circumstances of the case no fault can be found with the method adopted by learned District Judge for assessing the market value of the acquired land.

25. The learned counsel for the appellant has submitted that for structures the learned District Judge has arbitrarily enhanced market value by 50% It has come on record that market value of the structures was assessed on the basis of 1987 schedule of rates. The acquisition was done vide notification dated 6.6.1992. PW-4 R.K. Chona has stated that he assessed the market value of the structures on the basis of 1987 schedule. He has further stated that from 1987 to 1993 there was increase of rates 100 to 150%. It can be safely assumed that there is general trend of increase in cost of construction. The learned District Judge for assessing the market value of structures has given 50% increase on 1987 schedule of rates. In my opinion such increase is just and reasonable and does not require interference.

26. In RFA No.75/98 , the learned counsel for the appellant has submitted that the case LAC 31/94 was dismissed in default on 22.3.1994 and it was never restored. The learned District Judge has erred in law in allowing case LAC 31/94 along with other reference petitions vide impugned award dated 1.11.1997. No doubt case LAC 31/94 was dismissed in default on 22.3.1994 but it appears inadvertently the order of revival of this case was not passed in case LAC 31/94 even though this case was heard along with other cases. On 11.7.1995 in case LAC 53/94 the learned District Judge has passed specific order of consolidation of case LAC 53/94 and other cases i.e. LAC 31/94, LAC 51/94, and LAC 54/94. Naresh Rana Petitioner in case LAC 31/94 appeared as PW-1 on 21.11.1995 in case LAC 53/94 after the other cases were consolidated with that case. The appellant never took the objection before learned District Judge that case LAC 31/94 has not been restored after it was

dismissed in default on 22.3.1994 and therefore case LAC 31/94 could not be consolidated with case LAC 53/94. It appears the parties remained under the impression that in fact case LAC 31/94 has been restored and that is why no such objection was taken. In my opinion the technical objection of the appellant that case LAC 31/94 was not restored and therefore, it could not have been decided along with other land references has no merit. The learned District Judge has rightly considered case LAC 31/94 along with other cases in impugned award.

27. The land owners have filed Cross-objections. It has been submitted that market value of the land on the basis of the sale deed Ex.PW-3/A comes to Rs. 1,00,000/- per bigha but the learned District Judge has erred in making deduction from the value of land recorded in Ex.PW-3/A for assessing the market value of the acquired land after having relied sale deed Ex.PW-3/A. It has been submitted that uniform market rate of acquired land irrespective of classification should have been allowed. The 50% increase given for structures is less. No compensation has been awarded for standing crops, fruit bearing and other trees by learned District Judge. The land owners therefore, prayed for enhancement of the compensation.

28. The assessment of market value on the basis of sale deed Ex.PW-3/A has already been discussed above. The land acquired for the reservoir was large area having different classifications. The market value of the different types of land was assessed separately by the Collector and on the basis of sale deed Ex.PW-3/A market value of Brani Awal has been assessed by learned District Judge by giving 45% increase and same increase of market value has been given for assessing the market value of the other types of land, therefore, no

fault can be found for the method adopted by learned District Judge for assessing the market value of land classifications wise. The land owners are not entitled to uniform market rate of whole of the land acquired.

29. The land owners did not bring on record specific evidence what was the market value of their structures at the time of notification under Section 4 of the Act. The 50% increase given by learned District Judge for assessing the market value of the structures on the basis of 1987 H.P. schedule of rates in my opinion is just and proper and the land owners are not entitled to further increase of market value of their structures. The land owners have failed to prove on record the costs of their standing crops and value of their alleged fruit and non-fruit trees standing on the acquired land, therefore, they are not entitled to any compensation for standing crops, fruit and non-fruit trees.

30. In the facts and circumstances of the case and in view of above discussion , the learned District Judge has rightly assessed the market value of the acquired land and structures and the impugned award does not require any interference.

31. The result of the above discussion is that RFA No.56/98 along with Cross-objection No.161/98, RFA No.63/98 along with Cross-Objection NO.159/98, RFA No.72/98 along with Cross-objection No.164/98 and RFA No.75/98 along with Cross-objection, No.160/98 are dismissed with no orders as to costs.

(Kuldip Singh)
Judge

May 30 , 2007
(sks)